

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 17-5868-MWF (KS) Date: December 28, 2018

Title *Natalio Trevizo v. S. Webster et al*

Present: The Honorable: Karen L. Stevenson, United States Magistrate Judge

Gay Roberson
Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE RE: DISMISSAL

On August 8, 2017, Plaintiff, a prisoner incarcerated at the Federal Correctional Institution at Lompoc, California (“FCI-Lompoc”) and proceeding *pro se*, filed a civil rights complaint pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), concerning, *inter alia*, Plaintiff’s exposure to, and contraction of, an infectious medical disease and his subsequent medical treatment. (Dkt. No. 1.) On July 31, 2018, the Court dismissed the Complaint with leave to amend and ordered Plaintiff to file a First Amended Complaint correcting the defects identified by the Court no later than August 30, 2018. (Dkt. No. 19.) On August 27, 2018, Plaintiff filed a First Amended Complaint (the “FAC”). (Dkt. No. 23.) On September 6, 2018, the Court dismissed the First Amended Complaint and ordered Plaintiff to file a Second Amended Complaint within 30 days, *i.e.*, no later than October 6, 2018. (Dkt. No. 25.)

On September 10, 2018, Plaintiff sent the Clerk a document entitled “Power of Attorney,” which did not reference the case caption, case number, or any of the factual allegations of Plaintiff’s earlier pleadings, and the Court ordered the document rejected and returned. (Dkt. No. 26.) On October 22, 2018, the Court issued an Order to Show Cause why the case should not be dismissed for Plaintiff’s failure to file a Second Amended Complaint. (Dkt. No. 27.) On November 16, 2018, Plaintiff filed a Second Amended Complaint. (Dkt. No. 28.) On November 20, 2018, the Court dismissed the Second Amended Complaint and ordered Plaintiff to file a Third Amended Complaint by December 11, 2018, and warned Plaintiff that his failure to do so could result in a

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recommendation of dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Dkt. No. 29.)

More than two weeks have passed since Plaintiff's Third Amended Complaint was due, and Plaintiff has not filed the Third Amended Complaint, notified the Court of a change of address, or otherwise communicated with the Court about this case.

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, an action may be subject to involuntary dismissal if a plaintiff "fails to prosecute or to comply with these rules or a court order." Accordingly, the Court could properly recommend dismissal of the action for Plaintiff's failure to timely comply with the Court's November 20, 2018 Order.

However, in the interests of justice, Plaintiff is **ORDERED TO SHOW CAUSE on or before January 18, 2019**, why the Court should not recommend that this action be dismissed for failure to prosecute. Plaintiff may discharge this Order by filing: (1) a request for an extension of time to file a Third Amended Complaint and a declaration signed under penalty of perjury, explaining why he failed to comply with the Court's November 20, 2018 order; or (2) a Third Amended Complaint. Alternatively, if Plaintiff does not wish to pursue this action, he may dismiss the Complaint without prejudice by filing a signed document entitled "Notice Of Voluntary Dismissal" pursuant to Rule 41(a)(1)(A).

Plaintiff is advised that the failure to respond to this order will lead the Court to recommend dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Initials of Preparer

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